

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

BFI WASTE SERVICES OF OHIO, INC.,
d/b/a LORAIN COUNTY RESOURCE
RECOVERY COMPLEX

Employer

and

Case No. 8-RC-16540

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL UNION NO. 20,
A/W INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.¹

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

¹ The Parties have filed briefs, which have been carefully considered. Upon the entire record in this proceeding, the undersigned finds: the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

All full and regular part-time operators (including balers, skidsters, tow motor, and scale house operators), sorters (including line leaders and quality control employees), truck drivers and maintenance employee employed at the Employer's Oberlin, Ohio recycling facility, but excluding office clerical and confidential employees and professional employees, guards, and supervisors as defined in the Act.²

There are approximately 24 employees in the unit found to be appropriate herein.

INTRODUCTION

The Employer operates a recycling facility in Oberlin, Ohio where it receives waste materials from various sources and separates, processes, and ships out the waste material to a final mill for recycling. There is no history of collective bargaining regarding the employees in the unit sought.

The Petitioner seeks to represent what is essentially an overall production and maintenance unit of the Employer's full-time and regular part-time employees. The Parties disagree over whether scalehouse operators and sorters should be excluded from the Unit.

The Employer contends that the positions of scalehouse employees and sorters, including line leaders and quality control employees, do not share a community of interest with the other employees and should be excluded from the unit, contrary to the position of the Petitioner.

I find that the scalehouse employees and sorters, including line leaders and quality control employees, share a community of interest with the other employees and should be included in the unit found appropriate.

² With the exception of the positions at issue, the unit description is substantially in accordance with the stipulation of the parties.

FACTS

The Employer's Oberlin, Ohio facility receives some recyclable material from municipalities, internal BFI/Allied waste handling divisions, outside waste haulers and individual customers. Approximately 95 per cent of the material, however, is received from other BFI/Allied waste handling divisions.

The Employer's General Manager is David Matthews, who also has responsibility for the adjacent landfill. The Operations Manager is William Moyers who is also Floor Supervisor. The Second Shift Supervisor is Robert Cross.³

The Employer's major shift operates from 6:00 a.m. to 4:30 p.m. The second shift is from 4:30 p.m. to 4:30 a.m. but only Cross and 2 maintenance employees work on that shift.

The Employer's production process involves separating, processing and shipping the material to a customer for remanufacture. The first point of contact and the beginning of the production process is at the scalehouse when a truckload of material arrives. The scalehouse is located in a separate building, approximately 1,000 to 1,200 feet away from the main recycling facility. The scalehouse operator weighs the material being hauled, using a computerized system and prepares the billing statements for the driver to sign before the driver proceeds to the main facility.

The recycling facility is approximately 50,000 square feet and houses the recycling operations and an office. Upon arrival at the facility, drivers dump their load onto the "tip floor." The tip floor is divided into areas containing different types of recycled material. The tip floor is separated from the rest of the facility by a wall. Four conveyor belts run through the wall from the tip floor into the main part of the facility. These belts each carry one of the following types of

³ The Parties stipulated that the individuals are supervisors within the meaning of Section 2(11) of the Act. I shall accept the stipulation as the record supports it.

material: rigid (glass, aluminum and plastic); blue bags (newspapers, glass and plastic, aluminum and steel), newspaper and cardboard. The “blue bag” materials must be separated before being processed.

On the tip floor two operators load the materials onto the appropriate conveyor. These operators use mechanized equipment referred to as a “small wheeler” and a “bobcat skidster.” After the material is placed on the appropriate conveyer it goes into the main processing area.

While material is being processed, approximately 5 to 6 sorters will work on a conveyor sort line; thus there may be up to 22 sorters working a shift. Ten to twelve of these sorters are full-time employees, while 8 to 10 sorters are employed through Ameritemps placement agency.⁴

After the material has been sorted, it falls into a “bunker” or runs through a “trauma mill” to be processed by the baler. A skidster operator takes the material and places it onto the central conveyor. Before being baled, the material is subject to an additional screening by quality control employees, who sort out any contaminants which may have been missed.

After passing through quality control, the material then flows into the baler where it is wrapped and made ready for storage. The baler is run by an operator. Once the baler has packaged the material, a tow motor operator picks up the bale and places into the storage area of the facility.

The Employer’s drivers transfer to the Employer’s landfill compacted boxes of trash that the sorters have separated from recyclable material.

The maintenance employees perform general maintenance work on the machinery and the physical plant.

⁴ The parties stipulated at the hearing that any part-time sorter paid through a temporary agency would be ineligible as a casual employee. Since there is no record evidence to the contrary, I shall accept the stipulation.

A compost area is located at the facility where separated loads of leaves, brush and grass clippings are deposited. Operators use rollers to maneuver this material into equipment that processes it.

ANALYSIS

The Act requires that a petitioner seek only an appropriate unit and not the most appropriate or comprehensive unit. **Overnite Transportation Co.**, 322 NLRB 723 (1996); **Morand Brothers Beverage Co.**, 91 NLRB 409 (1950), *enfd.* 190 F. 2d 576 (7th Cir. 1950). The Board considers the petitioner's request concerning the composition of the unit and gives it relevant consideration. **Overnite Transportation Co.**, *supra* at 723. Further, a petitioner is not compelled to seek a narrower appropriate unit if a broader unit is also appropriate. **Overnite**, at 723-724.

In determining an appropriate unit the Board considers whether there is a community of interest among the employees in the desired unit. In finding a community of interest, many factors are taken into consideration. Including: the degree of functional integration; common supervision; the nature of employee skills and functions; interchangeability and contact among employees; work situs; general working conditions; and wages and fringe benefits. See, **Seaboard Marine Ltd.**, 327 NLRB 556 (1999); **Harron Communications**, 308 NLRB 62 (1992); and **Allied Gear & Machine Co.**, 250 NLRB 679 (1980).

Scalehouse Position

The Employer contends that the scalehouse employees are office clerical employees and therefore do not share a community of interest and should be excluded from the unit. There are 2 employees who hold this position. Miriam Martin is the principal scalehouse employee. Rebecca Schriener works in this position approximately 15 to 20 hours a week and the remainder

of her time is spent at the Employer's landfill. Only one scalehouse employee is on duty at a time.

Scalehouse employees work in a building which is located approximately 1,000 feet from the main recycling facility. As trucks enter the facility, the scalehouse employee identifies the truck and prepares the computer generated billing paperwork for the truck driver to sign before proceeding to the processing building. The scalehouse operator then records the information in a log which is then transferred at the end of the day to the main office for processing. As previously noted, the scalehouse serves as the initial point of contact and start of the production process at the facility. Scalehouse operators are paid \$9.30 an hour which is approximately \$.70 less per hour than that of operators within the facility but \$1.30 an hour more than the sorters. The scalehouse operators are supervised by Plant Manager Bill Moyers. While the Employer contends that scalehouse employees are supervised by Cindy Kozma, the Employer's controller at the landfill, the record does not establish that Kozma exercises actual supervisory authority over these employees.

Scalehouse operators answer a phone at the scalehouse and direct calls to the supervisors. On three or four occasions a year scalehouse employees have filled in as the receptionist in the office. The record reflects, however, that they have never performed the functions of the other 2 office clerical employees.

The Board has included scalehouse clerks in units of production and maintenance employees when the petitioner has sought to include them. See, **Hankins Lumber Co.**, 316 NLRB 837, 849 (1995); and **Worth Steel Company**, 53 NLRB 168, 171 (1943). In **Hankins** the Board noted that the weighing of the trucks was the first part of the production process and that wages paid to the scale employees were within the range paid to the other unit employees.

Although the Board excluded weigh clerks from a unit in **J.G. Boswell Company**, 47 NLRB 879, 882 (1943), I note that in that case the petitioner was not seeking to represent them as part of the petitioned-for production and maintenance unit. More importantly, even where a union sought to exclude scale house clerks the Board included them in a unit of production and maintenance employees because “their interests and contacts ally them more closely to the production workers than to the employees who are part of the Company’s office clerical staff.” **Aluminum and Magnesium, Inc.**, 62 NLRB 477 (1995).

Based on the foregoing policy, I find that the scalehouse employees should be included in the petitioned-for unit. As mentioned above, they serve as the primary contact in the production process at the facility, share common supervision with other unit employees and are paid at a wage within the range of unit employees. No evidence was presented indicating they receive dissimilar benefits. The work they do is distinct from that done by the office clericals and the fact that they occasionally serve as the receptionist does not serve as a basis to exclude them from the unit.⁵

Sorter Position

The Employer contends that the position of sorter, including the positions of line leader and quality control, does not share a community of interest with the other employees in the unit and should be excluded from the unit. There are approximately 10-12 employees who occupy this position.

The functions and duties of the sorter position involve separating and removing contaminated material from the conveyor lines of waste material running in the facility. The line leaders are the more senior individuals in the position while quality control individuals act as a

secondary screeners after the material has passed through the first line of sorters. Sorters are typically located on an elevated platform approximately 10-12 feet above the operators. Both operators and sorters are supervised by the Operations Manager William Moyers and Floor Supervisor Aaron Stahl. Operators are paid an average of \$10 per hour while sorters are paid an average of \$8 per hour. Sorters do not temporarily interchange with operators. However, sorters have been promoted to maintenance positions and driver positions in the past. Generally, however, the skill level requirement for a sorter position is minimal, given that sorters have no specific machine operation skill requirements.

The evidence presented at the hearing establishes a high level of functional integration between operators and sorters. While job duties and skill level may be different, the operational functional integration at the facility is clear. Thus an individual load of waste would come into contact with three different operators and two different sets of sorters before being finally processed. The operators and sorters share the same supervision under the plant manager and floor supervisor. The work situs of the operators and sorters is limited to the same facility and both positions generally work the same shifts and working hours. Wage rates between operators and sorters are not so different as to warrant a finding of lack of community of interest. Further, no evidence was presented which would indicate that the benefits are dissimilar.

In view of the high degree of operational functional integration, common supervision, common work situs, and general working conditions, the sorters' community of interest with the operators is sufficient to support the Petitioner's request to include them in the petitioned-for unit.

⁵ The fact that the scalehouse operator is excluded from the unit at the Employer's landfill is not a basis to exclude the position from the petitioned-for unit in this matter. The bargaining history at other plants of the same employer is not controlling with respect to the bargaining history of a particular plant. Big Y Foods, 238 NLRB 855 (1978).

Based on the above, I find that the sorter position, including line leaders and quality control, share a community of interest sufficient to be included in the overall production and maintenance unit I find to be appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees of BFI Waste Services of Ohio, Inc, d/b/a Lorain County Resource Recovery Complex in the bargaining unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the **INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION NO. 20, A/W INTERNATIONAL BROTHERHOOD OF TEAMSTERS.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by September 11, 2003.

DATED , at Cleveland, Ohio this 28th day of August 2003.

420-0150
420-4600

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

